

***United States Court of Appeals  
for the Second Circuit***



**APPELLEE'S  
SUPPLEMENTAL  
APPENDIX**





**Docket**  
**No. 75-6051**  
(F-123)

**IN THE**  
**United States Court of Appeals**  
**For the Second Circuit**

REV. DONALD L. JACKSON,

*Plaintiff-Appellant,*

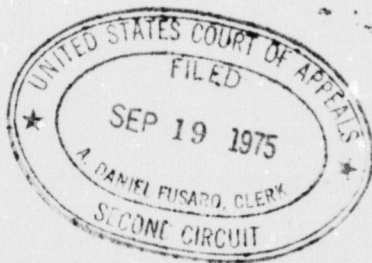
— against —

UNITED STATES OF AMERICA and  
STATE OF NEW YORK,

*Defendants-Appellees.*

On Appeal From the United States District Court for the  
Western District of New York

**APPELLEE'S SUPPLEMENTAL APPENDIX OF  
STATE OF NEW YORK**



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State of New York  
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Albany, New York 12224

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*United States of America*  
United States Courthouse  
Buffalo, New York 14202

REV. DONALD L. JACKSON  
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P.O. Box 494  
Buffalo, New York 14205

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## MOTION TO DISMISS.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

REV. DONALD L. JACKSON,

Plaintiff,

vs.

UNITED STATES OF AMERICA and  
STATE OF NEW YORK,

Defendants.

MOTION TO DISMISS

Civil Action No. 74-439

Comes now the defendant State of New York, and moves this Honorable Court pursuant to Rule 12 of the Federal Rules of Civil Procedure to dismiss the plaintiff's complaint on the following grounds:

1. Lack of jurisdiction.
  - (a) This Court lacks jurisdiction over the subject matter.
  - (b) This Court lacks territorial jurisdiction.
  - (c) The complaint fails to raise a substantial constitutional question.
2. The Complaint fails to state a cause of action.
3. Plaintiff has brought other actions in which he has demanded the same or similar relief.

As good cause therefor the defendant State of New York represents as follows:

1. The summons and complaint were served on an Assistant Attorney General in Albany, New York on March 22, 1974.
2. In the instant action plaintiff, among other things, challenges the constitutionality of Article VI, section 20 of the New York State Constitution and the tax exempt status of certain foundations.
3. The prior actions brought by plaintiff in which he has demanded the same or similar relief are the following:



## Motion to Dismiss.

(a) The plaintiff brought an action entitled "Rev. Donald L. Jackson v. City of Buffalo, County of Erie and State of New York" in the United States District Court for the Western District of New York (Civil Action No. 1971-478). A copy of the complaint is annexed hereto as Exhibit A. Plaintiff among other things requested in said action that Article VI, section 20 of the New York State Constitution be declared unconstitutional. By decision and order dated July 26, 1973, Hon. John T. Curtin, United States Judge, dismissed the action for failure to state a cause of action. A copy of said order is annexed hereto as Exhibit B. The plaintiff filed a notice of appeal on August 1, 1973, but has not otherwise perfected his appeal.

(b) Plaintiff brought an action entitled "Rev. Donald L. Jackson v. Judge Alois C. Mazur, Judge Frank R. Bayger, Judge Matthew J. Jasen, Attorney Frank A. Sedita, Jr., Attorney Michael Suhalla, and The State of New York" in the United States District Court for the Western District of New York (Civil Action No. 1973-386), a copy of which is annexed hereto as Exhibit C. Plaintiff among other things attacked in the complaint in that action, proceedings held in the City Court, City of Buffalo, as well as each of the judges and attorneys who were connected with those proceedings. That action also questioned the constitutionality of Article VI, section 20 of the New York State

## Motion to Dismiss.

Constitution. A motion to dismiss was made before District Court Judge John O. Henderson. Decision was reserved, and Judge Henderson died before a decision was rendered.

(c) Plaintiff brought an action entitled "Rev. Donald L. Jackson v. The Statler Foundation, Cameron Baird Foundation, The Baird Foundation, The Buffalo Foundation, William J. Connors Foundation, James H. Cummings Foundation, Harry Dent Family Foundation, Ferguson Foundation, Inc., Josephine Goodyear Foundation, Julia R. and Estelle L. Foundation, Inc., the Margaret L. Wendt Foundation, The Fahny R. and Grace K. Wurlitzer, Inc., Fred L. Emerson Foundation, Inc., Judge William J. Regan, Hon. Mario A. Procaccino, Hon. Louis J. Lefkowitz, Hon. George P. Shultz" in the United States District Court for the District of Columbia which was transferred, sua sponte to the Western District of New York (Civil Action No. 1974-185). A copy of said complaint is annexed hereto as Exhibit D. Plaintiff among other things sought in that action to have the tax exempt status of the defendant foundations revoked.

(d) Plaintiff also brought an action against the above-named foundations in the United States District Court, Western District of New York (Civil Action No. 1971-592). By an order of the Court dated March 29, 1974, the plaintiff was permitted to serve an amended complaint upon: Judge William J. Regan, Hon. Mario A. Procaccino, Hon. Louis J. Lefkowitz, Hon. H. B. Mosher, Hon. George P. Shultz and Hon. Donald L. Alexander. A copy of said amended complaint and order is annexed hereto as Exhibit E. Plaintiff among other things



## Motion to Dismiss.

sought to have the tax exempt status of these foundations revoked.

4. As can be seen from the foregoing, the plaintiff fails to raise any new matters in his complaint that had not already been raised in the four other actions.

5. That annexed hereto as Exhibit F is a true copy of Article VI, section 20 of the New York State Constitution.

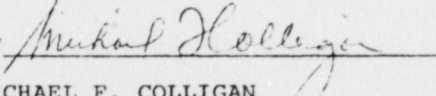
WHEREFORE, the defendant State of New York respectfully requests that it be granted a judgment dismissing plaintiff's complaint, together with costs.

Dated:

Respectfully submitted,

LOUIS J. LEFKOWITZ  
Attorney General of the  
State of New York  
Attorney for Defendant  
State of New York

By

  
MICHAEL F. COLLIGAN  
Assistant Attorney General  
The Capitol  
Albany, New York 12224  
Telephone: (518) 474-7185



## Motion to Dismiss.

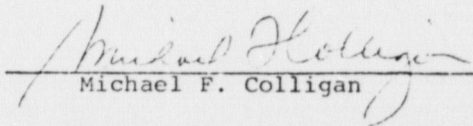
## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was  
mailed, postage prepaid, to:

Rev. Donald L. Jackson  
P.O. Box 494  
Buffalo, New York 14205

United States Attorney for the District of Columbia  
Third and Constitution Avenue N.W.  
Washington, D.C. 20001

this 15<sup>th</sup> day of May, 1974.

  
Michael F. Colligan

**Exhibit A -- Complaint & Declaratory Judgment  
annexed to Motion.**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK  
COMPLAINT FOR DECLARATORY JUDGMENT:

TO THE HONORABLE, THE JUDGE OF SAID COURT:

**I. JURISDICTION**

1. This is a Civil action whereby petitioner, Rev. Donald L. Jackson, 617 Main Street, Buffalo, New York prays a Declaratory Judgment be issued against Defendants: City of Buffalo, Buffalo, New York, and County of Erie, County Hall, Buffalo, N. Y. and The State of New York, Executive Chambers, Albany 1, New York. That this court declare Article 6 Section 20, of the Constitution of New York State as being un-Constitutional and all Judge offices that have been elected in this areas be declared vacant and all of their decisions be declared null and void.

Article 6, Section 20 of the Constitution of New York State. "Judicial office, qualifications and restrictions".  
a. No person, other than one who holds such office at the effective date of this article, may assume the office of judge of the court of appeals, justice of the supreme court, or judge of the court of claims unless he has been admitted to practice law in this state at least ten years. No person, other than one who holds such office at the effective date of this article, may assume the office of judge of the county court, surrogate's court, family court, a court for the city of New York established pursuant to section fifteen of this article, district court or city court outside the city of New York unless he has been admitted to practice law in this state at least five years or such greater number of years as the legislature may determine.

b. A judge of the court of appeals, justice of the Supreme court, judge of the court of claims, judge of a county court, judge of the surrogate's court, judge of the family court or judge of a court for the City of New York established pursuant to section fifteen of this article who is elected or appointed after the effective date of this article may not:

- (1). hold any other public office or trust except member of a constitutional convention or member of the armed forces of the United States or of the state of New York in which latter event the legislature may enact such legislation as it deems appropriate to provide for a temporary judge or justice to serve during the period of the absence of such judge or justice in the armed forces;
- (2) be eligible to be a candidate for any public office other than judicial office or member of a constitutional convention, unless he resigns his judicial office; in the event a judge or justice does not so resign his judicial office within ten days after his acceptance of the nomination of such other office, his judicial office shall become vacant and the vacancy shall be filled in the manner provided in this article;
- (3) hold any office or assume the duties or exercise the powers of any office of any political organization or be a member of any governing or executive agency thereof;
- (4). engage in the practice of law, act as an arbitrator, referee or compensated mediator in any action or proceeding or matter or engage in the conduct of any other profession or business with interferes with the performance of his judicial duties.

c. Qualifications for a restrictions upon the judges of district, town, village or city courts outside the city of New York, other than such qualifications and restricts specifically set forth in subdivision 1 of this section, shall be prescribed by the legislature, provided, however, that the legislature shall require a course of training and education to be completed by justices of town and village courts selected after the effective date of this article who have not been admitted to practice law in this state."



CAUSE OF ACTION:

1. That Article 6 Section 20, of the Constitution of New York State, deprives me my rights under the United States Constitution, in that I being a resident of the City of Buffalo, County of Erie and the State of New York, cannot become a candidate or be elected for the office of City Court Judge, County Court Judge or Supreme Court Judge or to any other judicial post or be appointed to any of these judicial post, unless I am a member of the Bar. (admitted to practice law).

2. That I am denied the right to select any good behavior Citizen to a judicial post.

3. That Article 6 Section 20, of the New York State Constitution takes my rights to be a candidate of a judicial post and my right to select or help select candidates for judicial post and give these rights to the Bar Association and Political Parties.

4. That political parties have and are selling judicial nominations and in some cases Judges have stated they have paid as high as \$30,000 for the political parties endorsement for judicial post.

5. That I have further suffered further because judges in the City and County and State Courts, are not servants of the people the judges are servants of and for the Bar Association and their political party. On many occasions when I would have business in one of these courts, the judge will be 30 minutes to hour late arriving in the court room.

6. That myself representing myself in the City Court, County, or Supreme Court, the presiding justice is a member of the Bar Association and therefore he will ignore and deny me of my rights to be favorable in his decision to his fellow lawyer.

7. All others who are not lawyer are barred from being judge.

8. Article 6 Section 20, discriminates against me because of the fact that I am a member of the non-white class, when educational opportunities have not and is not equal, likewise job opportunities.

9. That this Article 6 Section 20, violates my rights under the 14th Amendment to United States Constitution. It deprives me of privileges or immunities of citizens of the United States, also deprives me of life, liberty, or property without due process of law and they also deny me equal protection of the laws.

Exhibit A - Complaint for Declaratory Judgment  
annexed to Motion.

10. That the Federal Constitution does not grant New York State the authority to set any qualifications for Judge, and that Article 6 Section 20 violates my rights granted by the Federal Constitution.

11. That the only requirements for any Judgeship is to be a citizen of United States, and of good behavior

12. That Article 6 Section 20 of New York State Constitution deprives me the right to a trial by my an impartial jury as required by the 6th Amendment of U. S. Constitution.

13. That Article 6 Section 20 of the New York State Constitution deprives me rights granted by Article IV Section 2 (1) of the U. S. Constitution (The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.), that U. S. Constitution has no educational requirements to be a judge and U. S. Constitution does not require a person to be a Lawyer, to hold a Judgeship.

14. That the Article 6 Section 20 of New York State Constitution ~~deprives~~ me the right to seek and hold the office of City Court Judge, County Court Judge, State Supreme Court Judge, Surrogate Court Judge, Family Court Judge and the State Court of Appeals, or any office of Judge in the State of New York, without due process of the law, which violates the 5th and 14 Amendmentment of U. S. Constitution, which states (14th Amendment) "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

15. That citizens can be elected to legislatures in local and City and State Government and not be an Attorney, however under Article 6 Section 20 of New York State Constitution, a person must be a lawyer to apply the laws that non-lawyers pass.

16. That one cannot use the excuse the lawyers are better judges for they know the law, facts will bear out that these lawyers are not able to be judges for the appeals courts are ever burden with bad court decisions by these judges acting under the authority of Section 20 Article 6, of New York State Constitution.



Exhibit A - Complaint for Declaratory Judgment  
annexed to Motion.

2. Jurisdiction is conferred on this Court for the resolution of the substantial constitutional questions herein presented by Title 28 U. S. C. A. Section 1343 (Sub Section 3) which provides in pertinent part that the District Courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

"To redress the deprivation, under color of any state law, statute, ordinance, regulation, custom, or usage of any right, privilege or immunity secured by the Constitution of the United States.."

and the organic law which authorizes the institution of this suit founded on Title 42, U.S.C.A., Section 1981, which provides:

"All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts to sue, be parties, give evidence and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by White citizens, and shall be subject to like punishment, pain, penalties, taxes, license and exactions of every kind, and to no other."

Suit is further founded on Title 28 U. S. C. A. Section 1343 Sub-Section 4 "to recover damages or to secure equitable or other relief under any act of Congress providing for the protection of Civil Rights.." as well as 5th and 14th Amendment to United States Constitution and Article III Section 1 which provides (U.S. Const.)

"The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts shall hold their offices during good behavior, and shall, at stated times, receive for their service, a compensation, which shall not be diminished during their continuance in office."

and Article IV Section 2 (1) The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States, of the United States Constitution, and the 9th Amendment of United States Constitution, "The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people. and the 15th Amendment to United States Constitution. "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

and Article III Section 2 of the Constitution of the United States. Prayer for declaratory relief is founded on Rule 57 of the Federal Rules of Civil Procedure as well as Title 28 U. S. C. A. Section 2201.

**Exhibit A — Complaint for Declaratory Judgment  
annexed to Motion.**

The jurisdiction of this Court is also involved under Title 28 U. S. C. A. Section 1331.

Should the Court determine that this is a Class action, then under Federal Rules authorizing Class Actions, or this can be considered and individual action.

Petitioner being an American Citizen and a Citizen of the State of New York, this being a Civil action wherein the matter in controversy exceeds exclusive of interest and costs, the sum and value of Ten Thousand Dollars (\$10,000.00) and applies under the Constitution and laws of U. S.

II PARTIES

3. Rev. Donald L. Jackson, has been injured because of Article 6 Section 20 of the New York State Constitution, that denies me the right to exercise my United States Constitution rights to seek public office including the office of City Court Judge, County Court Judge, Supreme Court Judge and other judicial offices, and this deprival of my Constitutional right to seek the judicial office and to participate in the ~~selection~~ of candidates for judicial office has resulted in further denial of my rights guaranteed by the United States Constitution, a trial by an impartial jury, judges elected owe their alliance to the Bar Association, and fellow lawyers and their political party, I have been denied all right under Federal and State laws when seeking justice in the courts, I have been denied the right to counsel, I have been told the same laws that apply to White people do not apply to me, under the General Business Law states, foundations, court of jurisdiction is the State Supreme Court, however I have been told repeatedly in City Court and County as recently as October 15th, that these laws do not cover me. Lawyers are officers of the court, this also denies an individual an fair trial I have been denied an impartial trial constantly, for the Judge on the bench is a lawyer and a member of the Bar Association and I not being a lawyer nor a member of the Bar Association, the Judge will deliberately claim I am wrong in order to rule in favor of this lawyer friend. That Judges operating by election under Article 6 Section 20, has one set of justice for White people and a stranger sentence for Negro people. Under Article 6 Section 20, I am denied the right to be elected to any Judgeship even though I filed petitions.



Exhibit A -- Complaint for Declaratory Judgment  
annexed to Motion.

I have further been injured because Section 20 Article 6 of the New York State Constitution, has established a class to rule everyone that is not a lawyer regardless of our elected representatives. I have suffered immensely by this un-constitutional act by New York State law, that only those who pass the New York State Bar can stand for election and take office of Judge; Lawyers are made first class citizens under Article 6 Section 20 of the New York State Constitution and all those that are not lawyers including myself are second class citizens and not equal to hold any and all offices of the State, as provided by the United States Constitution.

RELIEF SOUGHT

Petitioner is entitled to and desires that this Court enter a Declaratory Judgment on final hearing under the provision of Title 28 U. S. C. A. Section 2201. That Article 6 Section 20 of the Constitution of New York State is unconstitutional and all Judges elected offices be declared vacant and all their decisions be hereby declared Null and Void, and that elections be ordered held for each Judgeship and that all candidates seeking a Judgeship cannot appear on the ballot listed under a political party and that Article 6 Section 138 of the New York State Election Law, be also declared unconstitutional, for it denies individuals the right to seek public office. It is impossible for an individual to secure necessary signatures to be on the ballot for any of the designated areas. Individuals must hire persons to circulate his petitions to run for office, this denies an individual the right to seek public office as authorized under the Federal Constitution.

Article 6 Section 20 of the New York State Constitution denies the equal protection of the laws, or equal privileges or immunities under the law and Due Process of the Law 14th Amendment of U. S. Constitution. The Legislature has no power to add to the Constitutional qualifications of voters Buckingham v. State ex rel. Killoran 35 A.2d 903 STATUTE WHICH IMPOSE ADDITIONAL QUALIFICATION OR DESQUALIFICATIONS TO THOSE IMPOSED BY CONSTITUTIONAL PROVISIONS RELATING TO THE RIGHT TO VOTE AND HOLD OFFICE ARE VOID. Falagis v Regan 126 P2d 818. The right to vote and to be voted for is a Constitutional Right. Asher v Barnett 132 S. W. 2d 772.

Exhibit A - Complaint for Declaratory Judgment  
annexed to Motion.

Rights privileges and immunities encompassed by this section includes right to equal protection of laws as well as right to due process of law Vry v Santee 303 F. Supp 119.

Constitution providing for "free" and equal election is violated when the same opportunity for voting is not given to all persons entitled to the ballot, or when the right of franchise is restrained by Civil or Military Authority. All regulations of election franchise must be reasonable, uniform and impartial. Graumen v. Jefferson County Fiscal Court 171 S. W. 2d 36.

A State is free to conduct its elections and limit its electorate as it may deem wise, save only as its action may be affected by the prohibitions of the Federal Constitution or in conflict with powers delegated to and exercised by the National Government. Smith v. . . Allwright 64 S. Ct 757, 321 U. S. 649 88 L.Ed. 987, 151 A.L.R. 1110. reversing 131 F2d 593, rehearing denied 64 S.Ct 1052 322 U.S. 769 88 L.Ed.1594.

The authority of Legislature to enact laws for purpose of securing purity in elections does not include right to impose any conditions which will destroy or seriously impede enjoyment of elective franchise Beckerman v. Doc 31 N.Y.S2d 217. Article I sec 5 of the Federal Constitution requiring that all elections be free and equal, means that no voter shall be physically restrained in the exercise of his right by either civil or military authority, and that there shall be no inequality, but that every voter shall have the same rights as every other voter Shoemaker v. Lawrence 31 D. & C 681

The people of a state may through a constitutional convention prescribe the qualification of voters and the limitation of the elective franchise, provided that the privileges and immunities guaranteed to voters by some provision of the Federal Constitution are not violated Pirtle v. Brown 118 F2d 218.

Deprivation of material necessary to afford reasonable access to the Courts, violates the due process clause of U. S. C. A. Amendment 14th and the Federal Court has jurisdiction of claim for damages based on such deprivation Sigafus V. Brown 416 F 2d 105

WHEREFORE, Petitioner prays:

Declaratory Judgment be issued declaring Article 6 Section 2 0 of New York State Constitution un constitutional and also declaring Article 6 Section 138 of the New York State Election Law unconstitutional.



Exhibit A - Complaint for Declaratory Judgment  
annexed to Motion.

and declaring all elected Judges office vacant and ordering election  
whereas all citizens can be candidate who desires, and to void all  
of their decision. Not only declaring Article 6 Section 138 of the  
New York State Election Law unconstitutional and to limit the number  
of petitions to any office not more than 100 signatures.

2. That judgement be rendered herein for damages in favor of  
Petitioner against Each of the defendants in the amount of  
one million dollars (\$1,000,000.00).

3. That Petitioner have such and other and further relief as  
may be appropriate under the circumstances in this case together  
with cost.

Respectfully submitted

*Rev. Donald L. Jackson*  
Rev. Donald L. Jackson  
617 Main Street  
Buffalo, New York 14203  
Phone 852-9006

STATE OF NEW YORK)  
COUNTY OF ERIE ) SS:  
CITY OF BUFFALO )

Rev. Donald L. Jackson, being duly sworn deposes and says that he  
is Petitioner in this action that he has read the complaint and knows  
that contents thereof; that the same is true to the knowledge of  
deponent, except as to the matters therein stated to be alleged on  
information and belief, and as to those matters he believes it to be  
true.

*Rev. Donald L. Jackson*  
Rev. Donald L. Jackson

SWORN TO BEFORE ME THIS 22nd DAY OF OCTOBER 1971.

*Robert S. White*  
Notary Public State of New York  
My Comm. Expires March 30, 1973

Exhibit B - Order annexed to Motion.

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---

REV. DONALD L. JACKSON

Plaintiff

-vs-

RECEIVED

JUL 27 1973

N. Y. S. DEPT. OF LAW  
BUFFALO OFFICE

Civil 1971-473

CITY OF BUFFALO  
COUNTY OF ERIE and  
STATE OF NEW YORK

---

Defendants

APPEARANCES: Plaintiff pro se.

Anthony Manguso, Corporation Counsel,  
City of Buffalo, Buffalo, New York,  
for defendant City of Buffalo.

Plaintiff alleges in his complaint that Article 6, Section 20 of the New York State Constitution violates the United States Constitution. The pertinent part of the challenged New York constitutional provision sets out the qualifications for holding judicial office in New York State. Article 6, Section 20a provides:

No person, other than one who holds such office at the effective date of this Article, may assume the office of judge of the court of appeals, justice of the supreme



## Exhibit B — Order annexed to Motion.

court, or judge of the court of claims unless he has been admitted to practice law in this state at least ten years. No person, other than one who holds such office at the effective date of this article, may assume the office of judge of the county court, surrogate's court, family court, a court for the city of New York established pursuant to section fifteen of this article, district court or city court outside the city of New York unless he has been admitted to practice law in this state at least five years or such greater number of years as the legislature may determine.

Jurisdiction in this action is alleged to be based upon the Civil Rights Act (42 U.S.C. §1983, 28 U.S.C. §1343).

Plaintiff states that because he is not a member of the bar, he is not entitled to be a candidate for any New York judicial post. He alleges that this requirement discriminates against him because he is black and thus has not been afforded the educational opportunities of white citizens. The complaint requests that the New York constitutional provision here challenged be declared violative of the federal Constitution, that all judicial offices in the state be declared vacant, and that all previous state judicial decisions be declared null and void. The complaint

Exhibit      Order annexed to Motion.

also requests damages of \$1,000,000.00. Plaintiff has moved for a preliminary injunction and the City of Buffalo has moved to dismiss the complaint on the grounds that it is not a proper party.

Although plaintiff's federal constitutional claims are somewhat difficult to determine, they seem to be based upon the equal protection and due process clauses of the fourteenth amendment, the privileges and immunities clause [Article 4, §2(1)], and the sixth amendment right to trial by jury.

The court finds that, on the facts alleged, plaintiff does not state a claim under the privileges and immunities clause or the sixth amendment.

The New York constitutional requirement that candidates for judicial office be members of the bar is designed to provide the state with a qualified judiciary. Plaintiff has not alleged facts showing arbitrary or capricious action, or intentional or invidious discrimination by the state. The state requirement serves a useful legitimate state purpose.

Exhibit B - Order annexed to Motion.


On these facts, the court finds that plaintiff has not stated a claim under the equal protection or due process clause of the fourteenth amendment. See McGowan v. Maryland, 366 U.S. 420, 461 (1961). The motion for a preliminary injunction is denied.

On motion of the City of Buffalo, the motion to dismiss the complaint as to the City of Buffalo is granted. The other two defendants have not filed motions, but no useful purpose would be served by permitting the actions against the other two parties to remain.

The court, on its own motion, shall dismiss the complaint against the defendant County of Erie and defendant State of New York.

The Clerk is directed to file a judgment dismissing the complaint against all defendants.

So ordered.

  
\_\_\_\_\_  
JOHN T. CURRAN  
United States District Judge

DATED: July 26, 1973



TRANSCRIPT OF PROCEEDINGS on 3-3-75.

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

\*\*\*\*\*

REV. DONALD L. JACKSON,

Plaintiff,

-v-

UNITED STATES OF AMERICA

CIVIL DOCKET  
NO. 1974-293

and

STATE OF NEW YORK,

Defendants.

\*\*\*\*\*

Proceedings held before the HON. JOHN T.  
CURTIN, United States District Judge, in Part I, United States  
Court House, Buffalo, New York, on March 3, 1975.

APPEARANCES:

REV. DONALD L. JACKSON appears pro se.

RICHARD J. ARCARA, United States Attorney,  
Attorney for the Defendant UNITED STATES  
OF AMERICA; THEODORE J. BURNS, Assistant  
United States Attorney, of Counsel.

LOUIS J. LEFKOWITZ, Attorney General of  
the State of New York, Attorney for the  
Defendant STATE OF NEW YORK; MICHAEL F.  
COLLIGAN, Assistant Attorney General, of  
Counsel.

THE COURT:

Civil 1974-293, Reverend Donald Jackson against the United States. Mr. Burns for the Government, and who is here, - Mr. Colligan - - -

MR. COLLIGAN:

Yes, your Honor, for the State.

THE COURT:

Mr. Jackson, I have received today, - you have served an additional affidavit in support of your three judge court application.

MR. JACKSON:

Yes, your Honor, I received an affidavit on it but it came Saturday. They sent it to the wrong address which it took me so long to get it, so I submit that affidavit and all parties have been served but, your Honor, this is something I want to give you in relevance to that matter that came up this morning.

THE COURT:

Very well. This is a Judicial Ethics Committee note. The headnote is "Federal Judges should resign membership in a number of organizations if such organizations are likely to be engaged in proceedings". What organization do you suggest I resign from, Mr. Jackson?

MR. JACKSON:

Your Honor, that section says that if

## Transcript of Proceedings on 3-3-75.

those organizations present matters before the Court it would be prejudicial and it mentions charitable organizations and the Buffalo Foundation is a charitable organization and it does have a matter before your court.

THE COURT:

I am not a member. I have no connection other than - - -

MR. JACKSON:

Judge Curtin itself is not a member of it but the Director is the United States District Court so the United States District Court is, - does appoint a member as the governing body of the Statler, - the Buffalo Foundation and they have a matter before this court so that therefore the court is actually a defendant in the action and judging an action that it themselves is a part of. The court is a part of this action.

THE COURT:

Very well. Thank you. In this case 74-293 you have received, I trust, the affidavit of Mr. Burns. Mr. Colligan, did you file an affidavit?

MR. COLLIGAN:

No, we didn't, your Honor. We had filed a motion to dismiss in this case, when



## Transcript of Proceedings on 3-3-75.

it was in the District of Columbia which has not been ruled on. We did write a letter to the court requesting that that motion be heard at the same time and a statement was attached to that motion as well as a memorandum of law.

THE COURT:

Do you have a copy of that letter there?

MR. COLLIGAN:

Yes, your Honor.

MR. JACKSON:

There was a motion, a summary motion for judgment filed before a motion to dismiss was submitted, your Honor. I think you should take all of them together.

THE COURT:

All right. What do you want to say in support of your motion? Do you want to have a three judge court, Mr. Jackson? What is your argument?

MR. JACKSON:

The lawsuit was filed on - - -

THE COURT:

Can you come over here so Mr. Knisley can hear you. Just carry your papers over.

MR. JACKSON:

All right. The original lawsuit that was filed in the District of Columbia that was later transferred to this court, page 2, paragraph 4th, one of the objects

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of the lawsuit was to declare Article 6, Section 20 of the New York State Constitution as being unconstitutional for it violates the United States Constitution, Article 3, Section 1, which states the only qualifications to hold office of judicial branch of government is good behavior. Article 6, Section 20 of the New York State Constitution requires a person to graduate a recognized university, practice law for five years, - pardon me, take the two and a half day bar examination, be admitted to practice law, practice law for five years before you are eligible for the lower court and ten years before you are eligible for the Court of Appeals and I hold that that is a poll tax which was outlawed by the 24th Amendment.

Now, there is a decision, a recent decision Manes vs. Goldin, United States District Court for the Eastern District of New York. In this particular case the plaintiff challenged the filing of fee which consists of five counties. The



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court held in this particular case a three judge court should be convened when the complaint seeks an injunction relief against the enforcement of a State statute or regulation that is enforced by officers of the State. Such enactment is one of statewide rather than local application. A substantial constitutional question is posed and the federal jurisdiction is otherwise sufficient under 28 USC 2281.

The United States Supreme Court has said that a three judge court may be convened where the action is against a local officer if he is functioning pursuant to a statewide policy and performing a State function. The New York State Constitution provides for a unified court system and that is what we are attacking. We are attacking a statewide policy in which Article 6, Section 20 of the New York Constitution established a unified court system for the whole State, so therefore this is a State policy and we are entitled to a three court panel under that.

Now, the complaint also challenges

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Article 6, Section 138 of the New York Constitution which gives lawyers seeking a judicial position a greater voting right. They have the right to file their nominating petitions in all recognized political parties while non-lawyers do not have that right. This is a State policy and not just a local policy.

Even though I am attacking that at this particular time I want to point out to the Court that in the case of United Oxen Party vs. Arthur Hadrick. This is a 1971 court decision. The Court in this particular case declared Article , - Section 138 of the New York State Election Law as unconstitutional for it gave one group of people more voting power than the other. However, New York State Attorney General did appear on that case and asked the Court to reconsider. The Court denied it but still in all New York State was still electing their judges under the section of law that has been declared unconstitutional and this has been since 1971, so this is a state policy we are attaching,



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not just a local affair and a threejudge court is appropriate here.

Now, as to the question that has been raised by New York State, but before going into that I want to say that after this lawsuit was filed the United States Government has made two appearances but have filed no papers and have made no denial of any of the allegations made in the complaint. Now, as to the State of New York they submitted a motion to the District Court of the District of Columbia and asked for enlargement of time which was granted to them on May 1st to May 15, 1974.

New York State did not file a timely motion as required by law. Their papers are before the Court and I am sure it is in the file. You will notice they file a motion on May 24th, six days after the time the Court authorized them to for enlargement of time. They made no application to the Court for additional time nor were any additional time granted.

However, one of the things that they

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mention in their affidavit in their motion, that New York State is immune from a lawsuit under the 11th Amendment. This is incorrect. The United States Supreme Court has made a number of recent rulings. Scheurer Administrative vs. Rhodes, 42 L.W. 4543. United States Supreme Court ruled on April 16, 1974 that the 11th Amendment grounds of civil damage action brought under 42 USC, Section 1983, the 11th Amendment does not shield the State officials accused of depriving another of federal rights. There are numerous cases out since that time - - -

THE COURT:

Mr. Jackson, I think we all agree to that. There that lawsuit was against Governor Rhodes.

MR. JACKSON:

Yes, it was against Governor Rhodes.

THE COURT:

This lawsuit is against the State of New York.

MR. JACKSON:

Well, all right then, your Honor, I have a case on that too. This is 11th Amendment, - this is the Boston Chapter of the NAACP vs. Beecher, decided 11-8-74.

The 11th Amendment does not immune the



State from being taxed for the cost of unsuccessful appeal from adverse Federal District Court. The Court held in this case the Court may in its own State have sovereignty but when they practice in the Federal Court and they be forced to appear in Federal Court they lose, - the State loses their sovereignty and therefore they do not hold any immunity as far as a suit for wrong, - for violation of a constitutional right under the 11th Amendment.

THE COURT: Do you know who the judge was in that case?

MR. JACKSON: I can't pronounce his name, "C-u-r-i-a-m". This is the Court of appeals in the first district.

THE COURT: Oh, I see, "per curiam", I guess.

MR. JACKSON: Per curiam, that's it. I'm sorry. Now, we are attacking in the complaint - -

THE COURT: Well, you want to throw the lawyers out of the judge positions, right, Mr. Jackson?

MR. JACKSON: I don't know what you are saying there, your Honor. Your question may be

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misleading.

THE COURT: You say that is unconstitutional.

MR. JACKSON: I just want our community to be run by the Constitution of the United States, no more and no less.

THE COURT: We agree; - I agree.

MR. JACKSON: Now, I am challenging the election of judges at large.

THE COURT: All right.

MR. JACKSON: The 6th Amendment of the United States Constitution requires that anyone charged with a crime is entitled to a trial in the district.

THE COURT: The other thing is you don't like the Buffalo Housing Court.

MR. JACKSON: No, your Honor, that's not a three judge matter there. I am only dealing with three judge matter in this particular argument.

THE COURT: What do you want to say about that too, because that is related, isn't it?

MR. JACKSON: Your Honor, I have only prepared my papers here to discuss, - for the three panel court. I wasn't going into the complete lawsuit but I will if you insist.



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In the case of Duncan vs. Louisiana, 391 U.S. 145 it was discussed at great length on how the 6th Amendment came into existence and they went into great length into discussing the vintage. The Court held that the vintage meant that a trial in the neighborhood and the neighborhood meant the district and it did not mean the judicial district, it meant the political district. The City of Buffalo has nine political districts. They elect their judges at large and do not require any judge to live in any district.

The County elects their judges. They do not require any of the judges to live in the district. The Supreme Court elects their judges for the Eighth Judicial District and they do not require any of the judges to live in any particular district.

Now, the courts have held that at large elections are unconstitutional for they dilute the voting strength of the minorities. Zimmer vs. McKeithan, 43 L.W. 2285, and there is a number of cases on

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it. In fact, there is a case in this court here, I believe. I think Judge Timbers came out with a decision on this.

THE COURT:

Do you mean Shedd against Lomenzo?

MR. JACKSON:

No, that wasn't the case, was it?

THE COURT:

It had to do with Niagara County.

MR. JACKSON:

Niagara County, yes. Yes, Citizens for Community Action at Local Level Corporation vs. Ghezzi, 11-22-74. His decision - - -

THE COURT:

I was on that panel. Go ahead. I know about that.

MR. JACKSON:

Your name was not listed. That decision along with other decisions that says at large elections are unconstitutional is in conformity with Rhodes, - Williams vs. Rhodes, United States Supreme Court decision found at 393 U.S. 23.

I just want to read a small part of this. Clearly the 15th Amendment and the 19th Amendment were intended to bar the federal government and the states from denying the right to vote on the grounds race, sex and presidential election and the 24th amendment clearly and literally bars any state from imposing a poll tax

on the right to vote. New York State has a poll tax. If you were to go to a university for seven years presuming you was going to Harvard University where the tuition is \$5,350, seven years is over \$35,000. That is a poll tax that the people in this state has to pay to be a first class citizen and all those who do not have \$35,000 are second class citizens.

Obviously we must reject the notion that Article 2, Section 1 gives the State power to impose a burden on the right to vote for such burdens are expressly prohibited in other constitutional provisions. We therefore hold that no state can pass a law regulating election that violates the 14th Amendment command that no state shall deny to any person equal protection of the law.

New York State has denied me equal protection. It denied me because I am black and denied me because I am poor. New York State has provided me with education.



THE COURT: Is that in this lawsuit? That is in your other lawsuit.

MR. JACKSON: That is in this lawsuit.

THE COURT: Is that in this lawsuit too?

MR. JACKSON: Yes, that's right. All this is part of this lawsuit. Now, when you drive your car down the highway and you see a sign that says 30 miles an hour or 50 miles an hour we know that is the speed limit, that is the law, but all the other laws that this community and this state makes they keep it secret from the public until you violate one of those laws and they snatch you up and say, "hold it, you violate this law".

The Constitution states - - -

THE COURT: Now, this is - - -

MR. JACKSON: I wasn't going to argue the lawsuit, your Honor. You started asking me questions on it, your Honor.

THE COURT: Mr. Jackson, why don't you tell me what else is involved here now so I can hear the other side.

MR. JACKSON: Are you going to rule, your Honor, on the motion for summary judgment too or

are you just going to rule on - - -

THE COURT:

I am going to rule on the motion for, - on your motion and on the State's motion.

MR. JACKSON:

All right. I wasn't notified. All right, I will go into the State motion because they filed an affidavit and I want to cover a few of their points in there and then I will be finished. I will go right along because I know you are pushed for time here.

In New York State's motion papers that they filed to dismiss my petition as based on the law defendant's motion on page 4, defendant states plaintiff has no inherent rights to be a judge and he quotes Session vs. State of Connecticut, 293 F.supp. 834. Now, Session vs. State of Connecticut is an action by a former State employee for a declaratory judgment declaring the Constitution of Connecticut, law of merit system is un constitutional.

It doesn't say anything like this and I don't know where this comes. I have read the whole decision over and

apparently the New York State Attorney General is trying to put something in the decision that doesn't exist.

Then New York State lists in the next paragraph , they cite McGowan vs. Maryland, 336 U.S. 420 and he states a requirement of admission to practice law is a reasonable means to achieve this end. I left out the first part which states the State in the exercise of its police powers has a legitimate interest in setting requirements to assure that its judges are qualified.

Now, McGowan vs. Maryland is a very large case and it deals with an employee of a large department store located on a Highway in Andrew County, Maryland, who was fined in Maryland for selling goods on Sunday. I think it was a looseleaf binder on Sunday and that decision doesn't say anything like that.

Defendant State of New York is trying to raise a smoke screen. Everything that they have raised is in their papers that I have filed in a number of lawsuits which is required and authorized under



the 7th Amendment as well as the 1866 Civil Rights Act.

Now, the 1965 Voting Rights Act requires the United States Attorney to make an independent determination of whether the New York State Voting Rights Law is not discriminatory. New York State Voting Rights Law, - pardon me, - New York State Law, Article 6, Section 20 has never been submitted to the Justice Department or the District Court to be approved. This law has been on the books all this many years and it has never been approved as required by 42 United States, USC 1973.

I have showed the court here that first we have a proper cause of action which requires a three panel court under 42 U.S. 2281 or 2284. I am challenging statewide policy and our local policy for Article 6, Section 20 sets a unified policy for the courts.

I have challenged the elections at large because the Eighth Judicial District covers eight districts. It is not a local area. It covers a large area. I have set

out to show that we are entitled to a three panel court to hear this argument.

Secondly, New York State's motion must be dismissed because no state can pass any law that takes the right, - the vote from any citizen unless they violate the 14th Amendment. No state can pass any law and I have in my papers before the Court and in my motion for summary judgment as well as the affidavit before the Court I won't go over it because I am sure the Court can read it. Those facts are set out and plain. No law can be passed by any state that will take away a person's right to vote and now you mentioned about the City Court - - -

THE COURT:

I heard your discussion about that.

MR. JACKSON:

Well, there was one thing I wanted to mention in there. I mentioned the fact that I think there is an Article 12, pardon me, Chapter 12, Article 12 of the Buffalo City Ordinance. I will read it.

THE COURT:

Mr. Jackson, I can read it. You have been - - -

MR. JACKSON:

You asked me about this.



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THE COURT:

I have heard it before.

MR. JACKSON:

All right.

THE COURT:

I want to hear Mr. Burns and Mr. Colligan briefly and see what they have to say about this. Mr. Colligan.

MR. COLLIGAN:

May it please the Court, with respect to the plaintiff's request for a three judge court it is our position that it is unnecessary in this case. As I stated earlier, we made a motion to dismiss in this case while it was still in the District of Columbia and at the same time we made our motion the case was transferred so that motion is still outstanding. We believe that the grounds set forth in our motion to dismiss make hearing this case by a three judge court unnecessary.

I would like to remove one of the grounds of our motion to dismiss. We had stated that the court lacks territorial jurisdiction. I think that has been cured by the transfer to this district.

Other than that we have covered the points in our brief and we have nothing further to add. Thank you, your Honor.



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THE COURT:

Mr. Burns.

MR. BURNS:

Your Honor, the Government has filed an affidavit in opposition to the motion for a three judge court which sets forth the position of the United States. That is that the plaintiff has not pointed to any act of the United States which is repugnant to the Constitution of the United States and as to any other arguments made by the plaintiff they appear directed more towards the acts by the State or State statutes and the Government would merely join in whatever, - in the arguments made in the State's motion to dismiss.

THE COURT:

You also move to dismiss?

MR. BURNS:

We have not filed a motion in this case, your Honor. You recall that this matter was last before the Court on December 9, 1974, at which time the clerk's file was in New York City with the Second Circuit Court of Appeals and the Court granted the Government's request to defer filing any papers until the entire file came back, confusing as this case was in

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connection with other cases.

Frankly, it seems to me, your Honor, that if the Court should grant the defendant State of New York's motion to dismiss and the United States' motion here, or rather the United States', - if the Court should first of all dismiss as to the State of New York and deny the plaintiff's motion for a three judge court as to the United States there really is nothing left for the Court to decide as to any complaints by the United States so there really would be nothing left of this lawsuit at that point.

THE COURT:

Thank you very much. I will consider it submitted and have something to you very soon.

(Proceedings of March 3, 1975  
concluded.)

\* \* \* \* \*



U.S. COURT OF APPEALS  
For the Second Circuit

REV. DONALD L. JACKSON, Pltff.-Applt.  
against  
U.S. OF AMERICA, et al, Defts.-Appellees.

STATE OF NEW YORK)  
COUNTY OF ALBANY ) ss.:  
CITY OF ALBANY )

RoseMarie LaSala, being duly sworn, says:  
I am over eighteen years of age and a Seniors Stenographer  
in the office of the Attorney General of the State of New York, attorney  
for the Deft.-Appellee herein.

On the 12th day of September 1975 I served  
the annexed Appellee's Supplemental Appendix of State of <sup>New York</sup> upon the  
persons  
~~attorney~~ named below, by depositing one copy thereof,  
properly enclosed in a sealed, postpaid wrapper, in the letter box  
of the Capitol Station post office in the City of Albany, New York,  
a depository under the exclusive care and custody of the United States  
Post Office Department, directed to the said <sup>persons</sup> ~~attorney~~ at the  
address es within the State respectively theretofore designated by  
them for that purpose as follows:

Richard J. Arcara  
U.S. Attorney  
Western District of N.Y.  
U.S. Courthouse  
Buffalo, New York 14202

Rev. Donald L. Jackson  
Pro Se  
P.O. Box 494  
Buffalo, New York 14205

Rose Marie LaSala

Sworn to before me this

12th day of September 1975

JOHN E. SHEA  
Notary Public, State of New York  
No. 4599228  
Qualified in Albany County  
Commission Expires March 28, 1977